

### **REMARKS**

Applicant thanks Examiner for the very thorough consideration given the present application. Claims 1-20 are now pending in the application. Claims 2 and 3 are amended. New claims 4-20 are added. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **APPOINTMENT OF NEW COUNSEL**

Simultaneously herewith, Applicant files a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address. With this filing, Applicant has revoked the authorization of Applicant's previous patent agent, and has appointed the practitioners at Harness, Dickey & Pierce, P.L.C. as his attorneys to prosecute the application identified above, and to transact all business in the Patent and Trademark Office connected therewith.

### **NONSTATUTORY DOUBLE PATENTING REJECTION**

Claims 1-3 stand rejected by the Officer under the judicially created doctrine of obviousness-type double patenting over claims 1, 3, 5 and 12 of U.S. Patent 6,669,154. While Applicant does not acquiesce in this rejection, Applicant nevertheless files simultaneously herewith a Terminal Disclaimer in compliance with 37 CFR 1.321(c) for purposes of expediting prosecution. Accordingly, the double patenting rejection of claims 1-3 should be withdrawn.

### **REJECTION UNDER 35 U.S.C. §102**

Claims 1-2 stand rejected under 35 U.S.C. §102(b) as being anticipated by Bastian (U.S. Pat. No. 5,638,644). Claim 2 further stands rejected under 35 U.S.C. §102(b) as being anticipated by Rieman (U.S. Pat. No. 5,110,080). These rejections are respectfully traversed.

### ***Claim 1***

Independent claim 1 recites "said back surface defining an opening therein, said opening having an upper surface that contacts said upper support surface of said track." Bastian does not disclose, teach or suggest at least this feature of claim 1.

Instead, the Bastian "vertical members 13-15 also have generally channel-like cross-sectional configurations with each member defining an elongate, inside pocket." (see, for example, Bastian column 2, lines 51-53). Further, Bastian Figure 2 shows the cross section of vertical members 13 and 14 to be non-continuous. Indeed, the elongate, inside pockets defined by the Bastian vertical members 13-15 extend or run along the entire length of the vertical members. Accordingly, Bastian thus does not disclose an "upper surface" of an opening in the back of any of the vertical members that contacts an upper support surface of a track. For example, and referring to element 26 in Bastian Figures 1 and 3, nothing contacts the upper portion of the element 26 – they are thus not "support surfaces." Because Bastian does not disclose each and every feature of independent claim 1, Applicant respectfully submits that Bastian does not anticipate claim 1.

### ***Claim 2***

Independent claim 2 recites "a track having means for supporting a standard." Per MPEP section 2181, Applicant respectfully requests the Patent Office to interpret the recited element "means for supporting a standard" consistent with 35 U.S.C. 112, sixth paragraph. As stated in MPEP section 2181:

The Court of Appeals for the Federal Circuit, in its *en banc* decision *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994), decided that a "means-or-step-plus-function" limitation should be interpreted in a manner different than patent examining practice had previously dictated. The *Donaldson* decision affects only the manner in which the scope of a "means or step plus function" limitation in accordance with 35 U.S.C. 112, sixth paragraph, is interpreted during examination.

When making a determination of patentability under 35 U.S.C. 102 or 103, past practice was to interpret a "means or step plus function" limitation by giving it the "broadest reasonable interpretation." Under the PTO's long-standing practice this meant interpreting such a limitation as reading on

any prior art means or step which performed the function specified in the claim without regard for whether the prior art means or step was equivalent to the corresponding structure, material or acts described in the specification. However, in *Donaldson*, the Federal Circuit stated:

The "broadest reasonable interpretation" that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination.

Consistent with the above, Applicant respectfully submits that claim 2 is not anticipated by either Bastian or Rieman because neither patent describes structure corresponding to the "means for supporting a standard" as is disclosed in Applicant's specification. Accordingly, Applicant respectfully submits that Rieman does not anticipate claim 2.

For example, Bastian column 3 at lines 9-23 states:

Conventional screws or other similar devices (not shown) secure the horizontal members 11 and 12 to the wall member W. Similarly, one may use such securing means to secure the vertical members 13-15 to the wall after placing the distal ends of the vertical members in the pockets defined by the horizontal members 11 and 12. Securing the vertical members 13-15 in this manner provides a more secure installation.

FIGS. 3 and 4 show the method of installing the vertical members 13-15 to the horizontal members 11 and 12. As shown, the first step comprises inserting a distal end of a vertical member into the pocket of the first horizontal member 11 or the second horizontal member 12. The next step comprises inserting the opposite distal end in the pocket of the opposite horizontal member.

But this means by which the vertical members 13-15 are supported in Bastian does not include each and every feature of the corresponding structure disclosed in Applicant's specification as the "means for supporting a standard". Accordingly, Applicant respectfully submits that Bastian does not anticipate claim 2.

Further, Rieman discloses a holding strip and a suspension bar 8. The holding strip includes a lower holding edge 2 bent obliquely upwardly and inwardly towards the room. The suspension bar 8 includes an obliquely upwardly and inwardly directed mounting slot 10 such that the suspension bar 8 can be hooked onto the lower holding

edge 2. The holding strip also includes an upper edge which is bent obliquely downwardly and inwardly towards the room and is used as a stop edge 3. The stop edge 3 prevents a removing of the suspension bar 8 from the holding edge 2 of the holding strip. The upper edge of the holding strip in one or several areas is cut away up to the rear face 1 a distance which corresponds to the width of the suspension bar 8, thus allowing the suspension bar 8 to be hooked downwardly over the holding edge 2 solely in this or these areas and subsequently be pushed in a lateral direction, sliding with its suspension slot 10 along the holding edge 2 into the desired position on the holding strip.

But this means by which the suspension bar 8 is supported in Rieman does not include each and every feature of the corresponding structure disclosed in Applicant's specification as the "means for supporting a standard". Accordingly, Applicant respectfully submits that Rieman also does not anticipate claim 2.

#### **REJECTION UNDER 35 U.S.C. § 103**

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bastian (U.S. Pat. No. 5,638,644). This rejection is respectfully traversed.

Applicant respectfully submits that in light of the showing above, claim 3 would not have been obvious in view of Bastian. That is, Bastian does not disclose, teach or even remotely suggest "said back surface defining an opening therein, said opening having an upper surface that contacts said upper support surface of said track." For at least this reason, the obviousness rejection of claim 3 should be withdrawn.

#### **NEW CLAIMS 4 THROUGH 20**

New claims 4 through 20 are supported by the application as originally filed. Accordingly, no new matter is introduced by the addition of claims 4 through 20.

New claims 4 through 9 depend from claim 1 shown above to be allowable. Accordingly, Applicant respectfully submits that claims 4 through 9 are in condition for allowance for at least the reasons given above in connection with claim 1.

New claims 10 through 13 depend from claim 2 shown above to be allowable. Accordingly, Applicant respectfully submits that claims 10 through 13 are in condition for allowance for at least the reasons given above in connection with claim 2.

New claims 14 through 17 depend from claim 3 shown above to be allowable. Accordingly, Applicant respectfully submits that claims 14 through 17 are in condition for allowance for at least the reasons given above in connection with claim 3.

New claims 18 through 20 are believed to be allowable over the cited patents because none of the cited patents, alone or in combination, disclose, teach or suggest at least:

“a track having a support portion, the support portion having an upper support surface and an extension extending generally upwardly from the upper support surface;

a standard having a front surface engageable with a bracket, and a back surface defining an opening therein; and

the opening having a notch that receives the extension of the support portion, and an upper surface that contacts the upper support surface of the support portion when the support portion is within the opening.”

### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

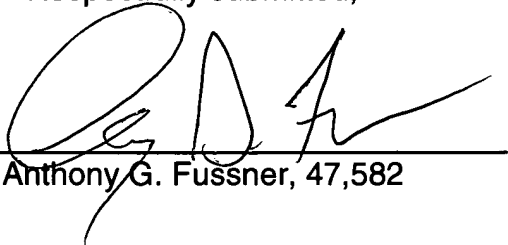
Applicant believes that there are no fees required for this amendment. But the Patent Office is hereby authorized to charge Deposit Account No. 08-0750 for any additional fees or to credit any overpayments thereto.

Prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (314) 726-7502.

Respectfully submitted,

Dated: June 14, 2004

By:



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